

AN ACT

relating to nursing peer review and the regulation of the practice of nursing.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 301.002, Occupations Code, is amended by adding Subdivisions (1-a) and (1-b) to read as follows:

(1-a) "Chief nursing officer" means the registered nurse who is administratively responsible for the nursing services at a facility.

(1-b) "Patient safety committee" has the meaning assigned by Section 303.001.

SECTION 2. Subsection (b), Section 301.303, Occupations Code, is amended to read as follows:

(b) The board may not require participation in more than a total of 20 hours of continuing education in a two-year licensing period ~~[and may not require that more than 10 hours of the continuing education consist of classroom instruction in approved programs. The remaining hours of continuing education may consist of any combination of:~~

~~[(1) classroom instruction,~~

~~[(2) institutional-based instruction, or~~

~~[(3) individualized study].~~

SECTION 3. Section 301.352, Occupations Code, is amended by amending Subsection (a) and adding Subsections (a-1) and (f) to

1 read as follows:

2 (a) A person may not suspend, terminate, or otherwise  
3 discipline or discriminate against a nurse who refuses to engage in  
4 an act or omission as provided by Subsection (a-1).

5 (a-1) A nurse may refuse to engage in an act or omission  
6 relating to patient care that would constitute grounds for  
7 reporting the nurse to the board under Subchapter I, that  
8 constitutes a minor incident, or that violates this chapter or a  
9 board rule if the nurse notifies the person at the time of the  
10 refusal that the reason for refusing is that the act or omission:

11 (1) constitutes grounds for reporting the nurse to the  
12 board; or

13 (2) is a violation of this chapter or a rule of the  
14 board.

15 (f) A violation of this section is subject to Section  
16 301.413.

17 SECTION 4. Subchapter H, Chapter 301, Occupations Code, is  
18 amended by adding Section 301.355 to read as follows:

19 Sec. 301.355. POLICIES APPLICABLE TO NURSES EMPLOYED BY  
20 MEDICAL AND DENTAL UNITS. (a) The president of a medical and  
21 dental unit, as defined by Section 61.003, Education Code, shall  
22 determine whether a nurse who is employed by the unit for practice  
23 in patient care or in clinical activities is a full-time employee  
24 for purposes of:

25 (1) employees group benefits under Chapter 1551 or  
26 1601, Insurance Code;

27 (2) leave under Chapter 661 or 662, Government Code;

1 and

2 (3) longevity pay under Section 659.043, Government  
3 Code.

4 (b) A determination under Subsection (a) does not entitle a  
5 nurse who works less than 40 hours a week to the full state  
6 contribution to the cost of any coverage or benefit. However, from  
7 money other than money appropriated from the general revenue fund,  
8 the medical and dental unit may contribute to the cost of any  
9 coverage or benefit an amount that exceeds the state contribution.

10 SECTION 5. The heading to Subchapter I, Chapter 301,  
11 Occupations Code, is amended to read as follows:

12 SUBCHAPTER I. REPORTING VIOLATIONS AND PATIENT CARE CONCERNS [~~DUTY~~  
13 ~~TO REPORT VIOLATION~~]

14 SECTION 6. Section 301.401, Occupations Code, is amended to  
15 read as follows:

16 Sec. 301.401. DEFINITIONS [~~GROUND FOR REPORTING NURSE~~].  
17 In this subchapter:

18 (1) "Conduct subject to reporting" means conduct by a  
19 nurse that:

20 (A) violates this chapter or a board rule and  
21 contributed to the death or serious injury of a patient;

22 (B) causes a person to suspect that the nurse's  
23 practice is impaired by chemical dependency or drug or alcohol  
24 abuse;

25 (C) constitutes abuse, exploitation, fraud, or a  
26 violation of professional boundaries; or

27 (D) indicates that the nurse lacks knowledge,

1 skill, judgment, or conscientiousness to such an extent that the  
2 nurse's continued practice of nursing could reasonably be expected  
3 to pose a risk of harm to a patient or another person, regardless of  
4 whether the conduct consists of a single incident or a pattern of  
5 behavior.

6 (2) "Minor incident" means conduct by a nurse that  
7 does not indicate that the nurse's continued practice poses a risk  
8 of harm to a patient or another person.

9 (3) "Nursing educational program" means an  
10 educational program that is considered approved by the board that  
11 may lead to an initial license as a registered nurse or vocational  
12 nurse.

13 (4) "Nursing student" means an individual who is  
14 enrolled in a nursing educational program [~~(a) Except as provided~~  
15 ~~by Subsection (b), the following are grounds for reporting a nurse~~  
16 ~~under Section 301.402, 301.403, 301.405, or 301.407:~~

17 [~~(1) likely exposure by the nurse of a patient or other~~  
18 ~~person to an unnecessary risk of harm,~~

19 [~~(2) unprofessional conduct by the nurse,~~

20 [~~(3) failure by the nurse to adequately care for a~~  
21 ~~patient,~~

22 [~~(4) failure by the nurse to conform to the minimum~~  
23 ~~standards of acceptable nursing practice, or~~

24 [~~(5) impairment or likely impairment of the nurse's~~  
25 ~~practice by chemical dependency].~~

26 [~~(b) Subsection (a) does not apply to a minor incident, as~~  
27 ~~defined by Section 301.419, if the incident is not required to be~~

1 ~~reported under a rule adopted under Section 301.419.]~~

2 SECTION 7. The heading to Section 301.402, Occupations  
3 Code, is amended to read as follows:

4 Sec. 301.402. MANDATORY REPORT BY NURSE [~~DUTY OF NURSE TO~~  
5 ~~REPORT~~].

6 SECTION 8. Subsections (b), (e), and (f), Section 301.402,  
7 Occupations Code, are amended to read as follows:

8 (b) A nurse shall report to the board in the manner  
9 prescribed under Subsection (d) if the nurse has reasonable cause  
10 to suspect that:

11 (1) another nurse has engaged in conduct subject to  
12 reporting [~~is subject to a ground for reporting under Section~~  
13 ~~301.401~~]; or

14 (2) the ability of a nursing student to perform the  
15 services of the nursing profession would be, or would reasonably be  
16 expected to be, impaired by chemical dependency.

17 (e) Instead of reporting to the board under Subsection (b),  
18 a [A] nurse may make a report required under:

19 (1) Subsection (b)(1) to a nursing peer review  
20 committee under Chapter 303; or

21 (2) Subsection (b)(2) to the nursing educational  
22 program in which the student is enrolled [~~instead of reporting to~~  
23 ~~the board~~].

24 (f) A person may not suspend or terminate the employment of,  
25 or otherwise discipline or discriminate against, a person who  
26 reports, without malice, under this section. A violation of this  
27 subsection is subject to Section 301.413 [~~nurse may report to the~~

1 ~~nurse's employer or another entity at which the nurse is authorized~~  
2 ~~to practice any situation that the nurse has reasonable cause to~~  
3 ~~believe exposes a patient to substantial risk of harm as a result of~~  
4 ~~a failure to provide patient care that conforms to minimum~~  
5 ~~standards of acceptable and prevailing professional practice or to~~  
6 ~~statutory, regulatory, or accreditation standards. For purposes of~~  
7 ~~this subsection, the employer or entity includes an employee or~~  
8 ~~agent of the employer or entity].~~

9 SECTION 9. Subchapter I, Chapter 301, Occupations Code, is  
10 amended by adding Section 301.4025 to read as follows:

11 Sec. 301.4025. OPTIONAL REPORT BY NURSE. (a) In a  
12 written, signed report to the appropriate licensing board or  
13 accrediting body, a nurse may report a licensed health care  
14 practitioner, agency, or facility that the nurse has reasonable  
15 cause to believe has exposed a patient to substantial risk of harm  
16 as a result of failing to provide patient care that conforms to:

17 (1) minimum standards of acceptable and prevailing  
18 professional practice, for a report made regarding a practitioner;  
19 or

20 (2) statutory, regulatory, or accreditation  
21 standards, for a report made regarding an agency or facility.

22 (b) A nurse may report to the nurse's employer or another  
23 entity at which the nurse is authorized to practice any situation  
24 that the nurse has reasonable cause to believe exposes a patient to  
25 substantial risk of harm as a result of a failure to provide patient  
26 care that conforms to minimum standards of acceptable and  
27 prevailing professional practice or to statutory, regulatory, or

1 accreditation standards. For purposes of this subsection, an  
2 employer or entity includes an employee or agent of the employer or  
3 entity.

4 (c) A person may not suspend or terminate the employment of,  
5 or otherwise discipline or discriminate against, a person who  
6 reports, without malice, under this section. A violation of this  
7 subsection is subject to Section 301.413.

8 SECTION 10. Section 301.403, Occupations Code, is amended  
9 to read as follows:

10 Sec. 301.403. DUTY OF PEER REVIEW COMMITTEE TO REPORT.

11 (a) Except as provided by Subsection (b), a [A] nursing peer  
12 review committee operating under Chapter 303 that determines that a  
13 nurse has engaged in conduct subject to reporting [has a ground for  
14 reporting a nurse under Section 301.401] shall file with the board a  
15 written, signed report that includes:

16 (1) the identity of the nurse;

17 (2) a description of any corrective action taken  
18 against the nurse;

19 (3) a recommendation [statement] whether the [~~nursing~~  
20 ~~peer review committee recommends that the~~] board should take formal  
21 disciplinary action against the nurse and the basis for the  
22 recommendation;

23 (4) a description of the conduct subject to [ground  
24 for] reporting;

25 (5) the extent to which any deficiency in care  
26 provided by the reported nurse was the result of a factor beyond the  
27 nurse's control [~~rather than a deficiency in the nurse's judgment,~~

1 ~~knowledge, training, or skill~~]; and

2 (6) any additional information the board requires.

3 (b) A report under Subsection (a) is not required if:

4 (1) the nursing peer review committee determines that  
5 the reported conduct was a minor incident that is not required to be  
6 reported under board rule; or

7 (2) the nurse has been reported to the board for the  
8 conduct under Section 301.405.

9 SECTION 11. Section 301.404, Occupations Code, is amended  
10 to read as follows:

11 Sec. 301.404. DUTY OF NURSING EDUCATIONAL PROGRAM TO  
12 REPORT. [~~(a) In this section, "nursing educational program" and~~  
13 ~~"nursing student" have the meanings assigned by Section 301.402(a).~~

14 ~~[(b)]~~ A nursing educational program that has reasonable  
15 cause to suspect that the ability of a nursing student to perform  
16 the services of the nursing profession would be, or would  
17 reasonably be expected to be, impaired by chemical dependency shall  
18 file with the board a written, signed report that includes the  
19 identity of the student and any additional information the board  
20 requires.

21 SECTION 12. Subsections (b), (c), and (e), Section 301.405,  
22 Occupations Code, are amended to read as follows:

23 (b) A person that terminates, suspends for more than seven  
24 days, or takes other substantive disciplinary action, as defined by  
25 the board, against a nurse, or a substantially equivalent action  
26 against a nurse who is a staffing agency nurse, because the nurse  
27 engaged in conduct subject to reporting [~~a ground under Section~~

1 ~~301.401 exists to report the nurse]~~ shall report in writing to the  
2 board:

- 3 (1) the identity of the nurse;
- 4 (2) the conduct subject to reporting that resulted in  
5 ~~[ground that preceded]~~ the termination, suspension, or other  
6 substantive disciplinary action or substantially equivalent  
7 action; and
- 8 (3) any additional information the board requires.

9 (c) If a person who makes a report required under Subsection  
10 (b) is required under Section 303.0015 to establish a nursing peer  
11 review committee, the person shall submit a copy of the report to  
12 the nursing peer review committee. The nursing peer review  
13 committee shall review the conduct to determine if any deficiency  
14 in care by the reported nurse was the result of a factor beyond the  
15 nurse's control. A nursing peer review committee that determines  
16 that there is reason to believe that the nurse's deficiency in care  
17 was the result of a factor beyond the nurse's control shall report  
18 the conduct to the patient safety committee at the facility where  
19 the reported conduct occurred, or if the facility does not have a  
20 patient safety committee, to the chief nursing officer ~~[Except as~~  
21 ~~provided by Subsection (g), each person subject to this section~~  
22 ~~that regularly employs, hires, or otherwise contracts for the~~  
23 ~~services of 10 or more nurses shall develop a written plan for~~  
24 ~~identifying and reporting a nurse under Section 301.401(a). The~~  
25 ~~plan must provide for the review of the nurse and the incident by a~~  
26 ~~nursing peer review committee established and operated under~~  
27 ~~Chapter 303. Review by the committee is only advisory, but is~~

1 ~~required, even if the nurse is voluntarily or involuntarily~~  
2 ~~terminated].~~

3 (e) The requirement under Subsection (c) that a nursing peer  
4 review committee review the nurse and the incident does not subject  
5 a person's administrative decision to discipline a nurse to the  
6 peer review process [~~or prevent a person from taking disciplinary~~  
7 ~~action before review by the peer review committee is conducted].~~

8 SECTION 13. Subsection (b), Section 301.407, Occupations  
9 Code, is amended to read as follows:

10 (b) Unless expressly prohibited by state or federal law, a  
11 state agency that has reason to believe that a nurse has engaged in  
12 conduct subject to reporting [~~a ground for reporting a nurse exists~~  
13 ~~under Section 301.401]~~ shall report the nurse in writing to the  
14 board or to a nursing peer review committee under Chapter 303 [~~the~~  
15 ~~identity of that nurse].~~

16 SECTION 14. Subsections (a), (b), (c), and (e), Section  
17 301.413, Occupations Code, are amended to read as follows:

18 (a) A person named as a defendant in a civil action or  
19 subjected to other retaliatory action as a result of filing a report  
20 required, authorized, or reasonably believed to be required or  
21 authorized under this subchapter as a result of refusing to engage  
22 in conduct as authorized by Section 301.352, or as a result of  
23 requesting in good faith a nursing peer review determination under  
24 Section 303.005, may file a counterclaim in the pending action or  
25 prove a cause of action in a subsequent suit to recover defense  
26 costs, including reasonable attorney's fees and actual and punitive  
27 damages, if the suit or retaliatory action is determined to be

1 frivolous, unreasonable, or taken in bad faith.

2 (b) A person may not suspend or terminate the employment of,  
3 or otherwise discipline or discriminate against, a person who:

- 4 (1) reports, without malice, under this subchapter; or  
5 (2) requests, in good faith, a nursing peer review  
6 determination under Section 303.005.

7 (c) A person who reports under this subchapter, refuses to  
8 engage in conduct as authorized by Section 301.352, or requests a  
9 nursing peer review determination under Section 303.005 has a cause  
10 of action against a person who violates Subsection (b), and may  
11 recover:

- 12 (1) the greater of:  
13 (A) actual damages, including damages for mental  
14 anguish even if no other injury is shown; or  
15 (B) \$5,000 [~~\$1,000~~];  
16 (2) exemplary damages;  
17 (3) court costs; and  
18 (4) reasonable attorney's fees.

19 (e) A person who brings an action under this section has the  
20 burden of proof. It is a rebuttable presumption that the person's  
21 employment was suspended or terminated for reporting under this  
22 subchapter, for refusing to engage in conduct as authorized by  
23 Section 301.352, or for requesting a peer review committee  
24 determination under Section 303.005 if:

- 25 (1) the person was suspended or terminated within 60  
26 days after the date the report, refusal, or request was made; and  
27 (2) the board or a court determines that:

1                    (A) the report that is the subject of the cause of  
2 action was:

3                    (i) [~~(A)~~] authorized or required under  
4 Section 301.402, 301.4025, 301.403, 301.405, 301.406, 301.407,  
5 301.408, 301.409, or 301.410; and

6                    (ii) [~~(B)~~] made without malice;

7                    (B) the request for a peer review committee  
8 determination that is the subject of the cause of action was:

9                    (i) authorized under Section 303.005; and

10                    (ii) made in good faith; or

11                    (C) the refusal to engage in conduct was  
12 authorized by Section 301.352.

13                    SECTION 15. Section 301.457, Occupations Code, is amended  
14 by adding Subsection (g) to read as follows:

15                    (g) If the board determines after investigating a complaint  
16 under Subsection (e) that there is reason to believe that a nurse's  
17 deficiency in care was the result of a factor beyond the nurse's  
18 control, the board shall report that determination to the patient  
19 safety committee at the facility where the nurse's deficiency in  
20 care occurred, or if the facility does not have a patient safety  
21 committee, to the chief nursing officer.

22                    SECTION 16. Section 303.001, Occupations Code, is amended  
23 by adding Subdivision (4-a) to read as follows:

24                    (4-a) "Patient safety committee" means a committee  
25 established by an association, school, agency, health care  
26 facility, or other organization to address issues relating to  
27 patient safety, including:

1           (A) the entity's medical staff composed of  
2 individuals licensed under Subtitle B; or

3           (B) a medical committee under Subchapter D,  
4 Chapter 161, Health and Safety Code.

5           SECTION 17. Chapter 303, Occupations Code, is amended by  
6 adding Section 303.0015 to read as follows:

7           Sec. 303.0015. REQUIRED ESTABLISHMENT OF NURSING PEER  
8 REVIEW COMMITTEE. (a) A person shall establish a nursing peer  
9 review committee to conduct nursing peer review under this chapter  
10 and Chapter 301:

11           (1) for vocational nurses, if the person regularly  
12 employs, hires, or contracts for the services of 10 or more nurses;  
13 and

14           (2) for professional nurses, if the person regularly  
15 employs, hires, or contracts for the services of 10 or more nurses,  
16 at least five of whom are registered nurses.

17           (b) A person required to establish a nursing peer review  
18 committee under this section may contract with another entity to  
19 conduct the peer review for the person.

20           SECTION 18. Section 303.005, Occupations Code, is amended  
21 by adding Subsections (a-1) and (i) and amending Subsections (b),  
22 (d), and (h) to read as follows:

23           (a-1) For purposes of this section, a nurse or nurse  
24 administrator does not act in good faith in connection with a  
25 request made or an action taken by the nurse or nurse administrator  
26 if there is not a reasonable factual or legal basis for the request  
27 or action.

1           (b) If a person who is required to establish a nursing peer  
2 review committee under Section 303.0015 [~~regularly employs, hires,~~  
3 ~~or otherwise contracts for the services of at least 10 nurses~~]  
4 requests a nurse [~~one of those nurses~~] to engage in conduct that the  
5 nurse believes violates a nurse's duty to a patient, the nurse may  
6 request, on a form developed or approved by the board, a  
7 determination by a nursing peer review committee under this chapter  
8 of whether the conduct violates a nurse's duty to a patient.

9           (d) If a nurse requests a peer review determination under  
10 Subsection (b) and refuses to engage in the requested conduct  
11 pending the peer review, the determination [~~The determinations~~] of  
12 the peer review committee shall be considered in any [~~a~~] decision by  
13 the nurse's employer to discipline the nurse for the refusal to  
14 engage in the requested conduct, but the determination is  
15 [~~determinations are~~] not binding if a nurse administrator believes  
16 in good faith that the peer review committee has incorrectly  
17 determined a nurse's duty. This subsection does not affect the  
18 protections provided by Subsection (c)(1) or Section 301.352.

19           (h) A person may not suspend or terminate the employment of,  
20 or otherwise discipline or discriminate against, a nurse who in  
21 good faith requests a peer review determination under this section  
22 or a person who advises a nurse of the nurse's right to request a  
23 determination or of the procedures for requesting a determination.  
24 A violation of this subsection is subject to Section 301.413 [~~A~~  
25 ~~person is not required to provide a peer review determination under~~  
26 ~~this section for a request made by a registered nurse, unless the~~  
27 ~~person regularly employs, hires, or otherwise contracts for the~~

1 ~~services of at least five registered nurses]~~.

2 (i) A person who is required to provide, on request, a  
3 nursing peer review committee determination under Subsection (b)  
4 shall adopt and implement a policy to inform nurses of the right to  
5 request a nursing peer review committee determination and the  
6 procedure for making a request.

7 SECTION 19. Chapter 303, Occupations Code, is amended by  
8 adding Section 303.0075 to read as follows:

9 Sec. 303.0075. SHARING OF INFORMATION. (a) A nursing peer  
10 review committee and a patient safety committee established by the  
11 same entity may share information.

12 (b) A record or determination of a patient safety committee,  
13 or a communication made to a patient safety committee, is not  
14 subject to subpoena or discovery and is not admissible in any civil  
15 or administrative proceeding, regardless of whether the  
16 information has been provided to a nursing peer review committee.  
17 The privileges under this subsection may be waived only through a  
18 written waiver signed by the chair, vice chair, or secretary of the  
19 patient safety committee. This subsection does not affect the  
20 application of Section 303.007 to a nursing peer review committee.

21 (c) A committee that receives information from another  
22 committee shall forward any request to disclose the information to  
23 the committee that provided the information.

24 SECTION 20. Section 303.011, Occupations Code, is amended  
25 to read as follows:

26 Sec. 303.011. EVALUATION BY COMMITTEE. (a) In evaluating  
27 a nurse's conduct, the nursing peer review committee shall review

1 the evidence to determine the extent to which a deficiency in care  
2 by the nurse was the result of deficiencies in the nurse's judgment,  
3 knowledge, training, or skill rather than other factors beyond the  
4 nurse's control. A determination that a deficiency in care is  
5 attributable to a nurse must be based on the extent to which the  
6 nurse's conduct was the result of a deficiency in the nurse's  
7 judgment, knowledge, training, or skill.

8 (b) The nursing peer review committee shall report a  
9 deficiency in care that the committee determines was the result of a  
10 factor beyond the nurse's control to a patient safety committee for  
11 evaluation. The patient safety committee shall evaluate the  
12 influence of the factors on the conduct of the nurse being evaluated  
13 and on the practice of other nurses within the entity that  
14 established the committee. The committee shall report its findings  
15 to the nursing peer review committee.

16 SECTION 21. The following provisions of the Occupations  
17 Code are repealed:

- 18 (1) Subsection (d), Section 301.303;
- 19 (2) Subsection (e), Section 301.352;
- 20 (3) Subsections (a) and (c), Section 301.402;
- 21 (4) Subsections (d), (f), (g), and (h), Section  
22 301.405;
- 23 (5) Subsection (a), Section 301.419; and
- 24 (6) Subsection (h), Section 303.005.

25 SECTION 22. (a) Except as provided by Subsection (b) of  
26 this section, the changes in law made by this Act apply only to  
27 conduct that occurs on or after the effective date of this Act.

1 Conduct that occurs before the effective date of this Act is  
2 governed by the law in effect when the conduct occurs, and the  
3 former law is continued in effect for that purpose.

4 (b) The change in law made by this Act by the amendment of  
5 Subsection (b), Section 301.303, Occupations Code, applies only to  
6 an application for renewal of a license issued under Chapter 301,  
7 Occupations Code, that is submitted on or after the effective date  
8 of this Act. An application for renewal submitted before the  
9 effective date of this Act is governed by the law in effect when the  
10 application is submitted, and the former law is continued in effect  
11 for that purpose.

12 SECTION 23. This Act takes effect September 1, 2007.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 993 passed the Senate on April 12, 2007, by the following vote: Yeas 31, Nays 0; May 18, 2007, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 22, 2007, House granted request of the Senate; May 26, 2007, Senate adopted Conference Committee Report by the following vote: Yeas 30, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 993 passed the House, with amendments, on May 10, 2007, by the following vote: Yeas 136, Nays 0, one present not voting; May 22, 2007, House granted request of the Senate for appointment of Conference Committee; May 26, 2007, House adopted Conference Committee Report by the following vote: Yeas 139, Nays 0, two present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor